

## Alcohol and Tobacco Tax and Trade Bureau, Treasury

## § 40.44

§§ 40.34–40.36 [Reserved]

### Subpart D—Administrative Provisions

#### § 40.41 Forms prescribed.

(a) The appropriate TTB officer is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. When a return, form, claim, or other document called for under this part is required by this part, or by the document itself, to be executed under penalties of perjury, it shall be executed under penalties of perjury.

(b) Forms prescribed by this part are available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. ATF-92, 46 FR 46921, Sept. 23, 1981, as amended by T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-372, 61 FR 20725, May 8, 1996; T.D. TTB-44, 71 FR 16949, Apr. 4, 2006]

#### § 40.42 Authority of Appropriate TTB officers to enter premises.

Any appropriate TTB officer may enter in the daytime any premises where tobacco products are produced or kept, so far as it may be necessary for the purpose of examining such products. When such premises are open at night, any appropriate TTB officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any appropriate TTB officer or permit him to examine such products shall be liable to the

penalties prescribed by law for the offense.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. TTB-91, 76 FR 5479, Feb. 1, 2011]

#### § 40.43 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this part, or endeavors to intimidate or impede any TTB officer acting in his official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United States in connection with a violation of the internal revenue laws, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

#### § 40.44 Disposal of forfeited, condemned, and abandoned tobacco products.

A Federal, State, or local officer shall not sell or cause to be sold for consumption in the United States any forfeited, condemned, or abandoned tobacco products in his custody upon which the Federal tax has not been paid, if in his opinion the sale thereof will not bring a price equal to the tax due and payable thereon and the expenses incident to the sale thereof. Where the products are not sold the officer may deliver them to a Federal or State hospital or institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such products are sold they shall be released by the officer having custody thereof only after they are properly packaged and taxpaid. A receipt from the appropriate TTB officer evidencing payment of tax on such products shall be presented to the officer having custody of the products, which tax shall be considered part of the sales price. Where tobacco products which have been packaged under the provisions of part 44 or part 45 of this

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chapter are to be released after payment of tax, the purchaser shall appropriately mark each package “Federal Tax Paid (date)” before the officer having custody of the products releases them:

*Provided*, That if the purchaser is a qualified manufacturer of tobacco products, or for products packaged under part 44 a qualified export warehouse proprietor, the products may be released without such marking of the packages if the manufacturer or proprietor does not intend to place such products on the domestic market for taxable products but will dispose of them otherwise, such as by destruction or return to bond through claim for refund, and files a written statement to that effect, in original only, with the officer having custody of the products. In the case of products forfeited under the internal revenue laws the sale shall be subject to the provisions of part 172 of this chapter.

(68A Stat. 870, as amended, 72 Stat. 1425, as amended; 26 U.S.C. 7325, 5753)

[T.D. 6961, 33 FR 9488, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19339, May 22, 1987; T.D. ATF-469, 66 FR 56758, Nov. 13, 2001]

#### § 40.45 Alternate methods or procedures.

A manufacturer of tobacco products, on specific approval by the appropriate TTB officer as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The appropriate TTB officer may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure,

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue, and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or

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hinder the effective administration of this part.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. Where a manufacturer desires to employ an alternate method or procedure, he shall submit a written application to do so, in triplicate, to the appropriate TTB officer. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the appropriate TTB officer. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the appropriate TTB officer the revenue is jeopardized or the effective administration of this part is hindered. The manufacturer shall retain, as part of his records, any authorization of the appropriate TTB officer under this section.

#### § 40.46 Emergency variations from requirements.

The appropriate TTB officer may approve methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications.

(b) Will not hinder the effective administration of this part, and

(c) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the manufacturer thereupon shall fully comply with the prescribed requirements of